

SERVED: March 15, 2006

NTSB Order No. EA-5215

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of March, 2006

_____)	
Petition of)	
)	
DAVID M. IRWIN)	
)	
for review of the denial by)	Docket SM-4647
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
_____)	

ORDER DENYING PETITION FOR RECONSIDERATION

Petitioner, proceeding *pro se*, seeks reconsideration of our decision, NTSB Order No. EA-5196, served December 15, 2005. In that decision, we upheld the law judge's affirmation of the Administrator's denial of petitioner's medical certificate. We found that petitioner's airman medical file contained abundant evidence that petitioner has a history of a psychotic disorder that precludes him from obtaining a medical certificate.

Title 49 C.F.R. § 821.50(c) states that the Board will consider petitions for reconsideration when the petition fulfills certain requirements:

(c) *Content.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new

matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

Petitioner presents numerous arguments in an attempt to convince us to reverse our decision, none of which are new. First, petitioner challenges the Board's reliance on the certified copies of medical records from numerous treatment facilities and hospitals wherein several different psychiatrists, at several different times, consistently diagnosed petitioner with "schizophrenia, paranoid type." Petitioner argues that the Board should not have considered these records because they are too old. In addition, petitioner argues that the lack of a recent diagnosis in petitioner's airman medical file precludes denial of a medical certificate. We addressed these arguments in our order.¹ Petitioner has not demonstrated any error in our decision on these points.

Petitioner also argues that the Board's order should have concluded that petitioner does not have a "psychosis" as defined in 14 C.F.R. §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2). Petitioner contends that these regulations incorrectly define "psychosis." As we explained in our order, petitioner's condition clearly fits within the definition of "psychosis" found in the regulations.² Moreover, the Board does not have the

¹ Petition of David M. Irwin, NTSB Order No. EA-5196 at 4-5 (2005) (citing Schwartz v. Helms, 712 F.2d 633 (D.C. Cir. 1983), and stating that once the Administrator establishes that an airman is specifically disqualified from holding a medical certificate, the airman is automatically disqualified from receiving an unrestricted medical certificate). Petitioner argues that the Board's citation of Schwartz was inappropriate because the petitioner in Schwartz had a disqualifying cardiac condition, and not a psychiatric condition. This factual distinction is unavailing. Here, the facts require a determination that the Administrator established a specifically disqualifying medical condition. Petitioner does not present any evidence to counter this conclusion.

² See Diagnostic and Statistical Manual of Mental Disorders at 273, 283, 287 (4th Ed. 1994) ("DSM-IV"), which defines the term "psychotic" and states that schizophrenia is a "psychotic" disorder.

authority to review the constitutionality or validity of the FAA's regulations. Administrator v. Beauchemin, NTSB Order No. EA-4371 at 1 n.4 (1995).

Furthermore, petitioner again challenges the validity of the Administrator's chief psychiatrist's opinion. However, petitioner still has not proffered any evidence to contradict the chief psychiatrist's conclusion. Instead, petitioner's argument merely includes conclusory statements and general disagreements that are duplicative of those in his appeal. We addressed those arguments in our previous order, and petitioner has provided no medical evidence to challenge our conclusion.

Petitioner also argues that the Board's reference to petitioner's Supplemental Security Income (SSI) application is improper, because using "income status" to decide a case "would be discriminatory." Pet. for Recons. at 5. Our order on petitioner's appeal did not cite petitioner's SSI claim in the context of petitioner's level of income. We only reviewed the SSI documents to verify petitioner's history of paranoia and hallucinations, not to evaluate petitioner's income status.

Petitioner also states that the Board is not bound by the "findings of fact of the Administrator." Pet. for Recons. at 5 (citing 49 U.S.C. § 44703(d)(2)). While § 44703(d)(2) does not require the Board to accept all facts that the Administrator alleges, we have previously held that an airman seeking reversal of a denial by the Administrator of a medical certificate must demonstrate, by a preponderance of the evidence, that he or she is medically qualified. Petition of Robert Steve Wade, NTSB Order No. EA-4941 at 10 n.16 (2002). Here, petitioner has not proffered any medical evidence that even questions the Administrator's conclusion. Therefore, petitioner has not met his burden under 49 C.F.R. § 821.25.

ACCORDINGLY, IT IS ORDERED THAT:

Petitioner's petition for reconsideration is denied.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above order.